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8
9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE DISTRICT OF ARIZONA

11 UNITED FOOD & COMMERCIAL
WORKERS LOCAL 99; et al.,

12 Plaintiffs,

13 v.

14 JAN BREWER, in her capacity as
Governor of the State of Arizona; et al.,

15 Defendants.
16

NO. CV 11-0921 PHX-GMS

**DEFENDANT SHERIFF ARPAIO'S
MOTION TO DISMISS
FIRST AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

17 Defendant Sheriff Arpaio hereby moves to dismiss the "First Amended
18 Complaint for Declaratory and Injunctive Relief" filed herein, as follows:

19 The "First Amended Complaint for Injunctive and Declaratory Relief" should be
20 dismissed as against Defendant Arpaio pursuant to Rule 12(b)(1) and (6) of the Federal
21 Rules of Civil Procedure for failure to state a claim upon which relief can be granted and
22 because Plaintiffs do not have standing to assert a claim against this defendant. The

1 Plaintiffs have not established the real and immediate threat of harm required for a
2 justiciable case or controversy; they merely speculate in the abstract about potential
3 future harm. As a matter of law, Plaintiffs have failed to establish a cognizable case or
4 controversy.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 Plaintiffs have failed to state a claim upon which relief can be granted. Plaintiffs'
7 First Amended Complaint states only the following regarding Sheriff Arpaio:

8 "Defendant Joe Arpaio is the Sheriff of the County of Maricopa and
9 named as defendant herein in his official capacity. Absent contrary order
10 of this Court, the Sheriff and his deputies are likely to take action against
11 Plaintiff Unions as directed by Provisions of SB 1363." (Doc.#10-1, p.
12 7:1-4)

11 Undersigned counsel has found no other mention of Defendant Sheriff Arpaio
12 throughout the Complaint at all.

13 Moreover, for some reason, plaintiffs are not similarly concerned about sheriffs in
14 the other 13 counties throughout the State of Arizona, because they only sued Sheriff
15 Arpaio. They even admit that they are speculating into the future by stating the Sheriff is
16 "likely to take action." Clearly, he has done nothing yet and there is no justiciable case
17 or controversy involving Defendant Arpaio at this time.

18 For these reasons, the Sheriff of Maricopa County, Joseph Arpaio, requests that
19 this Court dismiss Plaintiffs' First Amended Complaint for Injunctive and Declaratory
20 Relief as to Defendant Arpaio.

21 . . .

22 . . .

I. THERE IS NO JUSTICIABLE CASE OR CONTROVERSY AND NO STANDING.

Plaintiffs have failed to allege facts in their Complaint showing that they have suffered, or will suffer, either an actual or imminent injury that would give them standing to pursue their claims. This is insufficient to meet pleading standards under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L.Ed.2d 9292 (2007); *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009).

A declaratory judgment or injunction can issue only when the constitutional standing requirements of a case or controversy are met. *Natural Resources Defense Council, Inc. v. Watkins*, 954 F.2d 974 (4th Cir. 1992). In order to be judiciable and to have standing, Plaintiffs must have alleged such a personal stake in the outcome of the controversy as to warrant federal court jurisdiction and to justify exercise of the court's powers on their behalf. *Warth v. Seldin*, 422 U. S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). A party has standing to maintain a declaratory judgment action where an actual controversy is created and there are cognizable interests. The constitutional requirement of personal stake has two prongs: (1) the litigant must show that he has suffered an actual or threatened injury, an injury in fact; and (2) the litigant must demonstrate that the defendant's conduct caused the injury and that granting the relief requested likely would redress the injury. *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Fla.*, 508 U.S. 656, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993). A personal stake in the outcome of the controversy assures that concrete adverseness which sharpens the presentation of issues upon which the court

1 depends. *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962)

2 Only those to whom the statute applies and who are adversely affected can
3 question a statute's constitutional validity in declaratory judgment proceedings. *See*
4 *Alabama State Federation of Labor, Local Union No. 103, United Broth. of Carpenters*
5 *and Joiners of America v. McAdory*, 325 U.S. 450, 65 S.Ct. 1384, 89 L.Ed. 1725 (1945);
6 *Ward v. Utah*, 321 F.3d 1263 (10th Cir. 2003); *Nova Health Systems v. Gandy*, 416 F.3d
7 1149 (10th Cir. 2005) (Deterrent effect that declaratory relief against Oklahoma public
8 officials responsible for overseeing state medical institutions would have on others
9 seeking to sue abortion providers in reliance on Oklahoma statute making providers that
10 perform abortions on minors without parental consent liable for post-abortion medical
11 costs did not satisfy requirement for Article III standing in provider's action challenging
12 statute's constitutionality.)

13 **II. THE CLAIMS ARE NOT RIPE FOR ADJUDICATION.**

14 The Complaint is based entirely on projecting into the future. Defendant Arpaio
15 should be dismissed until such time as there is an actual case or controversy. *See United*
16 *Public Workers v. Mitchell*, 330 U.S. 75, 67 S. Ct. 556, 91 L.Ed.754 (1947) (where the
17 Supreme Court found the issues challenging the Hatch Act to be not ripe for adjudication
18 for all plaintiffs except for the one and only plaintiff who had actually violated the
19 provision and the rules under it.) “A hypothetical threat is not enough.” *Mitchell, supra*,
20 330 U.S.at 90.

21 Plaintiffs have failed to satisfy the requisite threshold for alleging actual cases or
22 controversies. U.S.C.A.Const.Art.III, §2, cl.1; *See also City of Los Angeles v. Lyons*, 461

1 U.S.95,101, 103 S.Ct.1660, 1665, 75 L.Ed.2d 675(1983). The federal courts do not have
2 unconditional authority to review the actions of the legislatures of the several states.
3 The power of the federal court is finite, as expressly limited by Article III of the United
4 States Constitution. *Valley Forge Christian College v. Americans United for the*
5 *Separation of Church and State, Inc*, 454 U.S. 464, 471, 102 S.Ct. 752,757-758, 70
6 L.Ed.2d.700 (1982).

7 For the foregoing reasons, Sheriff Arpaio respectfully requests that the Court dismiss
8 Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief.

9 RESPECTFULLY SUBMITTED this 10th day of June 2011.

10 WILLIAM G. MONTGOMERY
11 MARICOPA COUNTY ATTORNEY

12 BY: /s/ Maria R. Brandon
13 MARIA R. BRANDON
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16 CERTIFICATE OF SERVICE

17 I hereby certify that on June 10, 2011, I caused the foregoing document to be
electronically transmitted to the Clerk's Office using the CM/ECF System for filing and
transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

18 COPIES electronically sent out this
19 10th day of June 2011 to:
20 Honorable G. Murray Snow
United States District Court
21 Sandra Day O'Connor U.S. Courthouse
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